United Nations AT/DEC/1104

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1104

Case No. 1199: TANG

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Mayer Gabay, Vice-President, presiding; Mr. Spyridon Flogaitis; Ms. Brigitte Stern;

Whereas at the request of Mallika Tang, a staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended to 15 July 2001 the time limit for the filing of an application with the Tribunal;

Whereas, on 23 June 2001, the Applicant filed an Application containing pleas which read, in part, as follows:

"II: PLEAS

...

12. On the merits, the Applicant respectfully requests the Tribunal to find:

a) that the Administration has consistently failed to follow proper classification appeal procedures;

b) that the Respondent further denied the Applicant due process by ignoring argumentation she provided in support of the classification of her post to a professional level ...

13. Whereafter the Applicant ... requests the Administrative Tribunal to order:

a) that the Administration [reclassify] the post to a professional level ...

..."

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 31 October 2001 and twice thereafter until 31 March 2002;

Whereas the Respondent filed his Answer on 8 February 2002;

Whereas the Applicant filed Written Observations on 13 March 2002;

Whereas the facts in the case are as follows:

The Applicant joined the Economic and Social Commission for Asia and the Pacific, Bangkok (ESCAP), on 23 May 1978, as a Computer Clerk at the GS-6 level. The Applicant's post was reclassified several times and, at the time material to this case, she was serving at the GS-9 level (on a nine level grading structure) as Programmer Assistant, in the Electronic Services Section (ESS).

In 1991, the International Civil Service Commission (ICSC) approved the Global Classification Standard for Non-Headquarters Duty Stations, based on a seven-level grading structure. Accordingly, on 15 September 1994, the Applicant's post was reclassified at the GS-7 level and her functional title was changed to Computer Systems Assistant.

On 7 November 1994, the Applicant appealed the classification level of her post, arguing that, while the job description for her post initially included a requirement for a university degree, this was changed following instructions from Personnel Services Section, to delete any such requirement. She further argued that as a result of this change in wording, the job description no longer reflected the full requirements of the job and that this was detrimental to the proper classification of the post. On 16 December, the Chief, ESS, submitted a memorandum in support of

the Applicant's appeal, clarifying that the Applicant's post is assigned the duties and responsibilities of a P-3 programmer/analyst.

On 29 December 1997, the Applicant wrote to the Executive Secretary, ESCAP, requesting information on the status of her appeal and, on 13 January 1998, the Chief, Division of Administration, ESCAP, wrote to the Chief, Common System and Specialist Services, OHRM, stating that the case had not been followed up through an oversight and requesting expeditious action on the case. On 22 January, the Chief, Division of Administration, was informed that, in accordance with the procedures set forth in administrative instruction ST/AI/398 of 19 September 1994, the appeal had been reviewed by the Common System and Compensation Section and its report would be submitted to the New York General Service Classification Appeals and review Committee (NYGSCARC).

On 24 December 1999 and, again, on 29 August 2000, the Applicant wrote to the Chief, Division of Administration, inquiring as to the status of her appeal and reminding him of the lengthy period that had elapsed since filing it.

On 20 December 2000, the NYGSCARC issued its report stating, inter alia:

> "13. The ... Committee ... concluded ... that the predominant work of the post failed to match the definitions contained in the Professional category ...
>
> 14. With respect to the issue regarding the university degree, the Committee agreed that the requirement for a university degree should be dependent on the functions of the job description, and not the qualifications of the incumbent. The Committee noted that the incumbent had a degree in Mathematics. The Committee compared the functions of the post to the requirements and agreed that the work described therein required only a combination of experience, coupled with the specific programming courses.
>
> *Conclusion*
>
> 15. The Committee ... determined that in accordance with the established methodology, the work and nature of the post best fit the General Service category, as defined under ... *Programming assistance*. ..."

Also on 20 December 2000, the Assistant Secretary-General for Human Resources Management informed the Applicant that she had accepted the recommendation of the NYGSCARC.

On 23 June 2001, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The initial classification had failed to take into account the true nature of the position.

2. The Administration failed to follow proper procedures and to give thorough consideration to all pertinent elements of the appeal and has thus denied the Applicant her rights of due process.

3. Consideration of the classification appeal was inexcusably late.

Whereas the Respondent's principal contention is:

The Respondent's discretionary decision with regard to the classification level of the Applicant's post was properly taken following an independent review by a specialized appeals body.

The Tribunal, having deliberated from 26 June to 21 July 2003, now pronounces the following Judgement:

I. The Applicant joined the Organization as a Computer Clerk at the GS-6 level with ESCAP, Bangkok, and gradually advanced to Programmer Assistant at the GS-9 level. Her Application stems from a reclassification exercise that replaced the then existing nine level grading structure with a seven level scale, as a result of which the Applicant's post was reclassified at the GS-7 level, with the functional title of Computer Systems Assistant. The said reclassification exercise followed the approval by the ICSC of a new classification scheme, the Global Classification Standard for Non-Headquarters Duty Stations, which was implemented in Bangkok, with effect from 15 September 1994.

On 7 November 1994, the Applicant appealed the new classification level of her post. In her appeal the Applicant claimed that, in determining the new grade of her post, the Administration relied on a job description that did not include the requirement of a university degree, which requirement was initially included in the job description but was subsequently deleted, resulting in an inaccurate job

description. The Applicant - who has a university degree - argued that, had this factor been taken into consideration, the post would have been classified at the professional category.

II. The qualifications of staff members are not a consideration in decisions regarding the classification or reclassification of posts and, job descriptions, on which the classification of posts rely, do not depend on the attributes of the encumbering staff member. Such decisions are not, and should not be, based on an individual case but rather on a general, regularized format, taking into account the organizational needs and the assessment of those needs, as made by the Organization. Indeed, administrative instruction ST/AI/398 of 19 September 1994, entitled "Implementation of the Initial General Service Classification Exercise and the Maintenance of the Classification System at Bangkok" states:

> "2. post classification is job-oriented: the classification of each post depends on the nature of the duties and responsibilities assigned to the post and not on the qualifications or experience of the incumbent or candidate for the post".

III. The Tribunal will not normally question decisions concerning classification or reclassification of posts. For a staff member to successfully challenge such a decision, he or she must prove that organizational changes were introduced and implemented with the intention to harm that staff member; demonstrate that prejudice or other improper motivation were behind the contested decision; or, that the Organization did not follow its own principles and guidelines in the formulation and/or the implementation of the new system.

The Tribunal recalls Judgement No. 396, *Waldegrave* (1987), where it held that:

> "It is not the function of the Tribunal to substitute its judgement for that of the Secretary-General in job classification matters ... It is instead the function of the Tribunal to determine whether under all the circumstances, the Respondent has acted within his reasonable discretion".

In Judgement No. 880, *MacMillan-Nihlén*, (1998), the circumstances of which were similar to the present case, the Tribunal held that:

> "... The Applicant cannot obtain reclassification based on evidence that, on occasion, she was performing higher-level duties than those listed in her job description. The Tribunal concludes that there was no abuse of discretion in this regard by NYGSCARC".

Having reviewed the documentation contained in the file, the Tribunal could find no evidence that the Organization was prejudiced against the Applicant. On the contrary, the Tribunal is satisfied that the reclassification of the Applicant's post was the result of a general exercise which was implemented throughout the Bangkok Office and which was carried out in accordance with the guidelines as established by the ICSC and in compliance with the applicable procedures, including throughout the appeal process. The Tribunal therefore finds that the reclassification of the Applicant's post was a proper exercise of the Respondent's discretion.

IV. The Tribunal notes, however, that there was a substantial delay in resolving the Applicant's appeal. The Applicant initiated the appeal process in November 1994, yet despite her repeated requests, the case was not finalized until 20 December 2000, when the Assistant Secretary-General for Human Resources Management finally informed the Applicant that she had accepted the NYGSCARC's recommendation, rejecting the Applicant's appeal.

The Tribunal finds this to be an inordinate delay, amounting to maladministration. Furthermore, the Tribunal has previously held, for example in *MacMillan-Nihlén*, (*ibid.*), that an Applicant does not have to show any specific damages resulting from undue delay, since "... an inordinate delay 'not only adversely affects the administration of justice but on occasions can inflict unnecessary anxiety and suffering to an applicant'" (see also Judgements No. 353, *El- Bolkany*, (1985) and No. 414, *Apete*, (1988)).

V. For the foregoing reasons, the Tribunal:

1. Orders the Respondent to pay to the Applicant the amount of $5,000 as compensation for the undue delay; and

2. Rejects all other pleas.

(Signatures)

Mayer **Gabay**
Vice-President, presiding

Spyridon **Flogaitis**
Member

Brigitte **Stern**
Member

Geneva, 21 July 2003

Maritza **Struyvenberg**
Executive Secretary

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